

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Lyle Grosbach et al.
Serial No. : 10/675,677
Filed : September 30, 2003
For : HIERARCHICAL SCHEDULING
Examiner : Ian Moore
Group Art Unit : 2616

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants respectfully request a review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated on the attached sheets.

Respectfully Submitted,



Dated: September 15, 2008
Hawthorne, New York

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ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW

In the Final Office Action (dated May 14, 2008), claims 1-12 and 14-18 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,272,109 to Pei et al. [hereinafter *Pei*]. Claim 13 was rejected as being unpatentable over *Pei* in view of U.S. Patent No. 6,560,230 to Li [hereinafter *Li*]. The rejection of independent claim 1 is illustrative as to how the rejections are clearly not proper and are clearly without basis.

A. THE CLAIM REJECTION UNDER 35 U.S.C. § 102 IS CLEARLY NOT PROPER AND IS CLEARLY WITHOUT BASIS AS THE CITED REFERENCE DOES NOT DISCLOSE "SELECTING A SECOND WINNING ENTRY... INDICATING A SECOND PIPE OR AN AUTONOMOUS FLOW TO BE SERVICED DURING THE TIME UNIT..."

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Manual of Patent Examination Procedure* § 2131, (8th Ed. 2001) (Rev. 7, July 2008) (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Id.* (citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Further, "The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *Id.* (citing *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)).

Independent claim 1 recites, inter alia:
selecting a second winning entry from the
plurality of main calendars during the time
unit, the second winning entry indicating a

second pipe or an autonomous flow to be serviced during the time unit[.]

Independent claims 12, 15, 16, 17, and 18 recite generally similar features.

In the Final Office Action, the Examiner relies on operations S5-S9, S11, and S13 in conjunction with FIG. 5 of *Pei* for disclosing selecting a second winning entry... indicating a second pipe or autonomous flow to be serviced during the time unit. However, a review of the cited sections of *Pei* do not explicitly address timing as claimed in the above feature. That is, the citations appear to be silent as to indicating a second flow to be serviced during the time unit.

Moreover, in FIG. 5, which the Examiner also relies upon, each column actually depicts different time units. Thus, contrary to the Examiner's contentions, Applicants respectfully submit that *Pei* fails to disclose the above features.

Applicants respectfully submit that the rejection is clearly not proper and is without basis. Accordingly, favorable reconsideration and withdrawal of the rejection under 35 U.S.C. § 102 are respectfully requested.

B. THE CLAIM REJECTION UNDER 35 U.S.C. § 103 IS CLEARLY NOT PROPER AND IS CLEARLY WITHOUT BASIS AS THE SECONDARY CITATION TO LI FAILS TO CURE THE DEFICIENCY OF THE REJECTION OF INDEPENDENT CLAIM 12 UPON WHICH CLAIM 13 DEPENDS

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Pei* in view of *Li*. Applicants respectfully submit that the secondary citation to *Li* fails to cure the deficiency of the rejection of independent claim 12 as set forth above.

Applicants respectfully submit that the rejection is clearly not proper and is without basis. Accordingly, favorable reconsideration and withdrawal of the rejection under 35 U.S.C. § 103 are respectfully requested.

C. CONCLUSION

For at least the reasons herein, Applicants respectfully submit that the rejections are clearly not proper, are without basis, and should be withdrawn. Further, Applicants respectfully request that the Office issue a finding that the application is allowed on the existing claims and that prosecution remains closed.

Respectfully Submitted,



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